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CROSBY & ASSOCIATES
711 South Eighth Street
Las Vegas, Nevada 89101
Phone: (702) 382-2600

Attorneys for Debtor

UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

* * * * *

In the matter of:

ALMA J. RIVERA-MENA,

Debtor.

Case No: BK-09-14946-BAM
Chapter 13

Date: October 1, 2009
Time: 2:30 p.m.

**MOTION TO VALUE DEBTOR'S PRINCIPAL RESIDENCE AND AVOID WHOLLY
UNSECURED LIEN(S) ENCUMBERING SAME. TO MODIFY THE RIGHTS OF
LIENHOLDERS AND OBJECTION TO LIENHOLDERS'
PROOF(S) OF CLAIM, IF ANY**

Comes Now Debtor, Alma J. Rivera-Mena, by and through her legal counsel, David M. Crosby, Esq., of the law firm Crosby & Associates who respectfully moves this Court to value Debtor's principal residence, determine the junior lien of NHS of Southern Nevada, to be wholly unsecured, to avoid said wholly unsecured lien and to modify the rights of said creditor accordingly including determining the claim pursuant to proof of claim which such lienholder may have filed to be unsecured where there is insufficient equity in the residence to secure more than the first lien.

This Motion is brought pursuant to 11 U.S.C. §502(a), §506(a), §1322(b)(2), and Bankruptcy Rules 3012 and 9014, the Points and Authorities set forth below and

///

///

all documents and pleadings on file herein.

Dated this 19th day of August, 2009.

CROSBY & ASSOCIATES

By:

David M. Crosby, Esq.
Attorney For Debtor

POINTS AND AUTHORITIES

I.

STATEMENT OF FACTS

1. Debtor filed a Chapter 13 petition in United States Bankruptcy Court, District of Nevada on April 2, 2009.

2. On the date of the petition, Debtor was the owner of real property used as her principal residence known and described as 9 North Arlington Street, Las Vegas, NV 89110 (Exhibit "1") as shown in the Deed of Trust, legally described as:

Lot Twelve (12) in Block One (1) of Pinewood Unit No. 3, as shown by map thereof on file in Book 23 of Plats, Page 22, in the Office of the County Recorder, Clark County, Nevada.

APN: 140-32-812-132

3. The value of said principal residence at the time her Chapter 13 Petition was filed was \$55,114 as set forth more particularly in an internet appraisal of subject property (Exhibit "2").

4. Said property at the time of filing was subject to the following liens evidenced by Promissory Note and allegedly secured by a Deed of Trust:

First Mortgage:	(Exhibit "3")	
US Bank Home Mortgage		\$ 92,606.57

P.O. Box 790415
St. Louis, MO 63179
Loan # 7810305003

Second Mortgage: (Exhibit "4")
NHS of Southern Nevada, Inc. \$ 93,000.00
1849 Civic Center Drive
North Las Vegas, NV 89030
Loan # 260003-RC

5. As of the date Debtor's Chapter 13 Petition was filed no equity existed in said property above the claim of the first mortgage holder identified above. The claim of the second mortgage holder identified above was wholly unsecured on the date of the Petition and if said property were foreclosed or otherwise sold at auction on that date there would be insufficient proceeds to pay anything to the junior NHS.

6. Debtor declares that the junior claim of NHS is unsecured and should be reclassified as unsecured to share pro rata with other general unsecured creditors through the debtor's Chapter 13 plan with any proofs of claim filed by it modified accordingly to document the claim as unsecured, and that the second lien filed by NHS as identified above encumbering subject property be properly avoided by Order of this Court.

II.

LEGAL ARGUMENT

A. **A Wholly Unsecured Lien Encumbering Debtor's Principal Residence May be Avoided Because Modification is Authorized/Not Prohibited by 11 U.S.C. § 1322(b)(2).**

11 U.S.C. §1322(b)((2) provides in pertinent part:

(b) Subject to subsections (a) and (c) of this section, the plan may—

* * * * *

(2) modify the rights of holders of secured claims, other than a claim secured only by a security interest that is secured by an interest in real property that is the debtor's principal residence,

1 The junior claim by NHS identified above has no security in Debtor's residence
2 based on the fair market value of the property and as a result is not a "secured claim"
3 as defined and therefore not restricted by this section.

4 **B. The Claim by Lienholder May be Bifurcated into Secured and Unsecured**
5 **Claims Pursuant to 11 U.S.C. §506(a).**

6 11 U.S.C. § 506(a)(1) provides in pertinent part:

7 (a)(1) An allowed claim of a creditor secured by a lien on
8 property in which the estate has an interest, or that is
9 subject to setoff under section 553 of this title, is a secured
10 claim to the extent of the value of such creditor's interest in
11 the estate's interest in such property, or to the extent of the
12 amount subject to setoff, as the case may be, and is an
13 unsecured claim to the extent that the value of such
14 creditor's interest or the amount so subject to setoff is less
15 than the amount of such allowed claim. Such value shall be
16 determined in light of the purpose of the valuation and of the
17 proposed disposition or use of such property, and in
18 conjunction with any hearing on such disposition

14 In re Zimmer, 313 F.3d 1220, 1221 (9th Cir.2002), accepted what was the
15 majority view in the various circuits, that a, wholly unsecured lienholder is not entitled to
16 the protection of 11 U.S.C. §1322(b)(2). The Court stated that a wholly unsecured
17 lienholder's claim can be modified and reclassified as a general unsecured claim
18 pursuant to 11 U.S.C. §506(a), despite the anti-modification language in §1322(b)(2).

19 **C. Any Proof of Claim Filed by Named Lienholders Should be Conformed by**
20 **Order of This Court to any Modification of Their Rights Determined by This**
21 **Court.**

21 11 U.S.C. §502 provides that a claim of interest represented by proper Proof of
22 Claim filed pursuant to section 501 is deemed allowed unless objected to. Debtor
23 herewith has objected to any and all Proof of Claim which may have been filed by the
24 junior claim of NHS and request that any Proof(s) of Claim of same representing such
25 claim be modified accordingly to an unsecured claim consistent with the Order of this
26 Court determining the junior NHS' claim to be wholly unsecured.

III.

CONCLUSION

Debtor request determination of value of Debtor's primary residence to be less than the amount of the first lien and argue that since the junior claim of NHS is wholly unsecured it may be avoided and "stripped off" pursuant to 11 U.S.C. §1322(b)(2) and §506(a); that the said claim of NHS be reclassified as general unsecured claim to be paid pro rata with other general unsecured creditors through the debtors Chapter 13 plan and that any Proof of Claim of the lienholder be modified accordingly.

WHEREFORE, Debtor prays that this Court:

1. Determine the value of Debtor's principal residence to be \$55,114 or such other amount as may be less than the balance of the first lienholder as of the date of the Petition; and

2. Avoid and extinguish NHS' wholly unsecured lien pursuant to 11 U.S.C. Section 506(a) upon completion of the Debtor's Chapter 13 plan; and

3. Reclassify the second claim of NHS as a general unsecured claim to be paid pro rata with other general unsecured creditors through the Debtor, Chapter 13 plan.

4. Conform any Proof of Claim filed by NHS to the unsecured status of said claim as determined by this Court.

5. Order such other relief as the Court may deem appropriate.

Dated this 16th day of August, 2009.

Respectfully Submitted:

CROSBY & ASSOCIATES

By:


David M. Crosby, Esq.
Attorney for Debtor(s)

APN NO. 140-32-812-132
 A/R P.T.T.S. 232.50

20030418
 02475

GRANT, BARGAIN, SALE DEED

THIS INDENTURE WITNESSETH: That: HEATHER FRENCH, A SINGLE WOMAN
 in consideration of \$10.00 the receipt of which is hereby acknowledged, do hereby Grant, Bargain, Sell and Convey to
 ALMA RIVERA, AN UNMARRIED WOMAN AS ~~SOLE~~ SOLE AND SEPARATE ~~PROPERTY~~
 all that real property situate in the County of Clark, State of Nevada, bounded and described as follows:
 Lot Twelve (12) in Block One (1) of PINWOOD UNIT NO. 3 as shown by map thereof on file in Book 23 of
 Plans, Page 22, in the Office of the County Recorder of Clark County, Nevada.

SUBJECT TO: 1. Taxes for the fiscal year 2002-03.
 2. Rights of way, reservations, restrictions, easements and conditions of record.

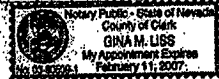
Together with all and singular the tenements, hereditaments and appurtenances thereto in anywise appertaining.

Witness my hand(s) this 11th day of April, 2003

Heather French
 HEATHER FRENCH

STATE OF Nevada }
 COUNTY OF Clark } s.s.

This instrument was acknowledged before me on
4/11/03 by HEATHER FRENCH



Gina M. Liss
 Notary Public in and for said County and State

Send Tax Statements to:

ESCROW NO: 223552-MW
 WHEN RECORDED MAIL TO:
 ALMA RIVERA,
 9 N. ARLINGTON STREET
 LAS VEGAS, NV. 89110.

***** CLARK COUNTY, NEVADA *****
 FRANCES DENNIS, RECORDER
 RECORDED AT REQUEST OF: NATIONAL TITLE COMPANY
 04-10-2003 14:49 SJD PAGE COUNT: 1
 OFFICIAL RECORDS
 BOOK/INSTR: 20030418-02475
 FEE: 14.00
 04/11/03 232.50

EXHIBIT



Sign Up | Sign In

Street Address

Zip Code or City, State

Search

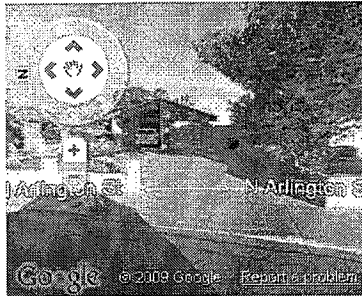
Home Values

Local Info

Find a Pro

9 N Arlington St Las Vegas, NV 89110

Home Details | Recently Sold Homes | Similar Homes for Sale | Home Values | Schools



Estimated Home Values:

eppraisal \$55,114

Low \$46,846 - High \$63,381

Zillow.com \$105,000

cyberhomes \$67,716

Helpful Links

- Home Values Trends and Statistics
- Recent Home Sales
- Homes for Sale
- Local Public Schools
- Local Demographic Statistics
- Need Assistance Moving?
- Find Local Foreclosures
- Local Job Opportunities



Add to favorites



Find a Pro

Home Details

Public Record

User Edits (Login or Register to edit.)

Bedrooms:	2	Bedrooms:	N/A
Bathrooms:	1.00	Bathrooms:	N/A
Square Footage:	872	Square Footage:	N/A
Year Built:	1979	Year Built:	N/A

House Appraisals

30 appraisers, 400 years total exp
\$350 fee, 24 to 48 ho ur
turnaround!
www.AppraisersofLasVegas.com

Home Details

What's My House Worth?

HouseValues' free service helps you determine the value of your home.
www.HouseValues.com

Ads by Google

Recently Sold Homes

Similar Homes for Sale

Recently Sold Homes

Address	Sales Price	Sale Date	Bed/Bath	Sq. Ft.
1459 Pleasant Brook St Las Vegas, NV 89142	\$43,000	5/7/2009	2/2	869
5424 Burkshire Dr Las Vegas, NV 89142	\$30,000	7/27/2009	2/1	862
404 Page St Las Vegas, NV 89110	\$37,500	5/15/2009	2/1	806
4612 Alyse Way Las Vegas, NV 89110	\$37,000	4/3/2009	2/1	910
537 Bayberry Dr Las Vegas, NV 89110	\$49,000	6/17/2009	2/1	935

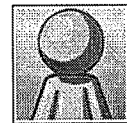


Ads by Google

Contact a local Real Estate Agent

Paul Kessin
A Plus Appraisals
5718 Sunningdale Court
Las Vegas, NV 89122

(702) 456-4586
Visit My Website



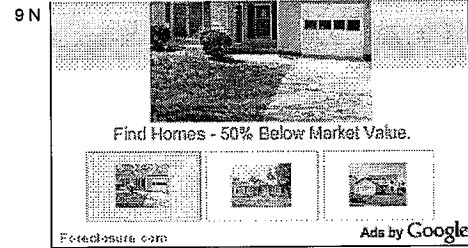
Become a local pro

Nearby Cities

Current City: Las Vegas, NV

- North Las Vegas, NV
- Las Vegas, MI
- Mount Charleston, NV
- Henderson, NV

EXHIBIT 2



89110 Homes For Sale

89110 Demographics

Population (estimate):	125,967
Median Age:	31.4 years old
Families with Children:	76.3%
Median Household Income:	\$53,795

89110 demographics

Las Vegas, NV Home Values

Home Value Trending What's This

Retrieving Data, Please Wait.

- Local
- State
- National

Home Data (as of June)

Median Sales Price:	\$140,900 -2% (from last month)
Number of Sales:	2119

Las Vegas Home Values

Las Vegas Schools

Public School District: Clark County School District

School Name	Level	Distance (miles)	Grades
Cyril Wengert Elementary School	Elementary School	0.66	PK, K-5
Dell H. Robison Middle School	Middle School	1.07	6-8
Eldorado High School	High School	1.35	9-12

Las Vegas schools

Arlington St is in the 89110 ZIP code in Las Vegas, NV. 9 N Arlington St has approximately 872 square feet. 9 N Arlington St has 2 bedrooms and 1.00 bathrooms. 9 N Arlington St was last sold on 4/11/2003.

Nearby Cities Real Estate

- Las Vegas, MI Real Estate
- North Las Vegas, NV Real Estate
- Las Vegas, NV Real Estate
- Henderson, NV Real Estate
- Boulder City, NV Real Estate

Las Vegas Real Estate Professionals

- Las Vegas, NV Real Estate Agents
- Las Vegas, NV Home Inspectors
- Las Vegas, NV Home Appraisers

Other Las Vegas Resources

- Las Vegas Home Values
- Las Vegas Demographics
- Las Vegas Recent Home Sales
- Las Vegas Homes for Sales

Las Vegas Real Estate Directory



Are you a real estate professional?
Join our directory. It's FREE!

Real Estate Agent

Deborah Carwile

Address: 3311 S. Rainbow Blvd. Las Vegas, NV 89146

Phone: (702) 243-9954 Cell Phone: 7023394732

Las Vegas Real Estate Agents

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Home Mortgage

U.S. Bank Home Mortgage
4801 Frederica Street
Owensboro, KY 42301



44474-0069378-014-1-000-010-000-000

ALMA RIVERA
9 N ARLINGTON ST
LAS VEGAS NV 89110-4724

Contact Information

24 Hour Automated Service: 1-800-365-7772
Customer Service Hours:
Monday - Friday, 7:00 a.m. - 8:00 p.m. CT
Hearing Impaired: 1-800-874-5563
Monday - Friday, 8:00 a.m. - 5:00 p.m. CT

Correspondence Address:
U.S. Bank Home Mortgage
P.O. Box 20005
Owensboro, KY 42304-0005

Overnight Payment Delivery Only:
U.S. Bank Home Mortgage
4801 Frederica Street
Owensboro, KY 42301

www.usbankhomemortgage.com

Statement Date

12/16/08

Payment Summary

SCHEDULED DUE DATE 01/01/09
We may contact you if payment is not received by scheduled due date.
LOAN DUE DATE 08/01/08

PAYMENT FACTORS

Principal & Interest	\$570.03
Tax	\$74.20
Insurance	\$53.28
PMI / MIP	\$34.93
Overage / Shortage	\$27.92
PAYMENT AMOUNT DUE	\$760.36
Past Due Amount(s)	\$3,769.64
Unpaid Late Charge(s)	\$228.01
Return Item / Other Fee(s)	\$235.00
TOTAL AMOUNT DUE	\$4,993.01
**IF PAID AFTER 01/16/09, PAY	\$5,023.42

Payment processing cutoff time is 5:00 p.m. Central Time, Monday - Friday. Payments received after cutoff time will be applied to your account the next business day. Late charges may be assessed if payments are not received on time as specified in the terms of your mortgage agreement. **Payments due on a weekend or legal holiday will not be assessed a late charge if received by cutoff time the following business day. Cutoff times may vary if choosing alternative payment options.

Loan Information

ACCOUNT NUMBER 7810305003
PROPERTY ADDRESS: 9 N ARLINGTON ST
LAS VEGAS NV 89110

INTEREST RATE 6.000%

BALANCES
Principal (Not a Payoff Amount) \$93,606.57
Escrow Advance (\$395.82)
Recoverable Corp Advance (\$988.30)

YEAR TO DATE
Interest Paid \$3,290.30
Taxes Paid \$939.82

SEE REVERSE SIDE FOR ADDITIONAL IMPORTANT INFORMATION

Transaction Activity

TRANSACTION DESCRIPTION	DUE DATE	TRANSACTION DATE	TOTAL RECEIVED	PRINCIPAL	INTEREST	ESCROW	OPT INS/ PRODUCT	SUBSIDY	SUSPENSE	FEES
MIP/EMI Disb	05/09	12/03/08				34.93-				
Late Charge	08/08	12/16/08								30.41-

IMPORTANT MESSAGES

Your 1098 Mortgage Interest Statement will be enclosed with the billing statement issued in January 2009. All 1098 Mortgage Interest Statements will be mailed by January 31, 2009.

If your account is 90 days or more in default, please contact our Loan Counseling department at 1-800-365-7900 before submitting the amount reflected on this statement as "Total Amount Due".

DETACH AND RETURN BOTTOM PORTION WITH YOUR PAYMENT



Home Mortgage

ALMA RIVERA

U.S. Bank Home Mortgage
P.O. Box 790415
St. Louis, MO 63179-0415



LOAN NUMBER	SCHEDULED DUE DATE	PAYMENT AMOUNT	PAST DUE AMOUNT	TOTAL AMOUNT DUE	* IF RECEIVED AFTER CUTOFF	PAYMENT AMT DUE
7810305003	01/01/09	\$760.36	\$3,769.64	\$4,993.01	01/16	\$5,023.42

Payment processing cutoff time is 5:00 pm Central Time, Monday - Friday. Payments received after cutoff time will be applied to your account the next business day. Late charges may be assessed if payments are not received on time as specified in the terms of your mortgage agreement. **Payments due on a weekend or legal holiday will not be assessed a late charge if received by cutoff time the following business day. Cutoff times may vary if choosing alternative payment options.

OVERNIGHT DELIVERY:

☐ Check here if name, address and/or phone number changes have been indicated on reverse side.

Additional Principal \$
Additional Escrow \$
Other (Please specify) \$
Total Amount Enclosed \$

00051576103050031 00790774 00760363 04993010 050234290

EXHIBIT 3

NHS of Southern Nevada, Inc.

1849 Civic Center Drive
N Las Vegas, NV 89030
702-649-0998

InvoiceDates

Invoice date: 05/16/08

Due date : 07/10/07

Send to

Ms Alma Rivera
9 N Arlington St
Las Vegas, NV 89110

Reference

Loan number: 260003 -RC

Collateral: 9 N Arlington St

Below you will find your invoice for the coming payment including any past payments due.

We appreciate your business. Call if we can be of any assistance to you.

Payments to bring current (11)	Regular :	\$	350.02
Last payment on 06/08/07 was due 06/10/07	Late/Svc :	+	110.00
	Accrued :	-	0.00
	Total late:	\$	460.02
Next payment due 06/10/08	Payment :	\$	31.82
Balance (est) : \$ 1853.18	Invoice :	\$	491.84
After 06/10/08	Late fee:		10.00
	Invoice :	\$	501.84

Return this portion with your payment.

From

Ms Alma Rivera
9 N Arlington St
Las Vegas, NV 89110

Reference

260003 -RC

Next payment due 06/10/08

Total late : \$ 460.02

Payment : \$ 31.82

Return to**NHS of Southern Nevada, Inc.**

1849 Civic Center Drive
N Las Vegas, NV 89030

Invoice : \$ 491.84

After 06/10/08 10.00

Invoice : \$ 501.84

EXHIBIT

02/10/03

RIVERO

GOOD FAITH ESTIMATE

NEIGHBORHOOD HOUSING SERVICES OF SOUTHERN NEVADA

The information provided below reflects estimates of the charges that you are likely to incur at the settlement of your loan. The fees listed are estimates - the actual charges may be more or less. Your transaction may not involve a fee for every item listed.

The numbers listed beside the estimates generally correspond to the numbered lines contained in the HUD-1 or HUD-1A Settlement Statement which you will be receiving at settlement. The HUD-1 or HUD-1A Settlement Statement will show you the actual cost for items paid at settlement.

<u>HUD-1/1A LINE</u>	<u>AMOUNT</u>	<u>ITEM</u>
901	\$ 6.25 *	Interest for 15 days at \$ 0.4167 per day
	\$ 6.25	Total

Items with (*) are shown on the Disclosure as Finance Charges.

These estimates are provided pursuant to the Real Estate Settlement Procedures Act of 1974, as amended (RESPA). Additional information can be found in the HUD Special Information Booklet, which is to be provided to you by your mortgage broker or lender, if your application is to purchase residential real property and the Lender will take a first lien on the property.

Property address: 9 N. Arlington Street, Las Vegas, NV 89110
Proposed loan type: NHS Second Mortgage

Sales price of property:	\$	93,000.00
Proposed mortgage amount:	\$	3,000.00
Proposed interest rate:		5.000000
Number of payments:		120

Estimated Payment	
Principal and/or Interest:	\$ 31.82
Mortgage Insurance:	\$ 0.00
Taxes and Assessments:	\$ 0.00
Insurance:	\$ 0.00
Other:	\$ 5.00
Total Payment:	\$ 36.82

A. Amount of this mortgage:	\$	3,000.00
B. Other financing:	\$	0.00
C. Other equity:	\$	0.00
D. Amount of cash deposit:	\$	0.00
E. Closing costs paid by seller:	\$	0.00
F. Other credits:	\$	0.00
G. Total (A+B+C+D+E+F):	\$	3,000.00

H. Purchase price/payoffs:	\$	93,000.00
I. Total est. settlement charges:	\$	0.00
J. Total est. prepaid charges:	\$	6.25
K. Total (H+I+J):	\$	93,006.25
Cash required for Closing (K - G)	\$	90,006.25

Date: _____

Authorized Official _____

ALMA RIVERA